

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DWAYNE LACEY

Application 09/935,297



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on August 11, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below:

- 1.) The Examiner's Answer mailed March 31, 2005, appears to have been drafted using the 37 CFR § 1.192(c) headings format. However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Therefore, the Appeal Brief filed on March 31, 2005, is not in compliance with the new Rules of Practice before the Board of Patent Appeals and Interferences as per 37 CFR § 41.37(c).
- 2.) Appellant filed Information Disclosure Statements (IDS) on August 22, 2001, July 22, 2004 and May 3, 2005 that have not been properly acknowledged. The examiner has neither initialed next to each of the references nor signed and dated the

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1449s of the IDSs, as required by the Manual of Patent Examining Procedure (MPEP) § 609 C(2).

According to MPEP § 609 C(2) (Eighth Ed., Rev. 2, May 2004):

Examiners must consider all citations submitted in conformance with the rules and this section, and their initials when placed adjacent to the considered citations on the list or in the boxes provided on a form PTO-1449 . . . provides a clear record of which citations have been considered by the Office. The examiner must also fill in his or her name and the date the information was considered in blocks at the bottom of the PTO-1449 or PTO/SB/08A and 08B form.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) to vacate the Examiner's Answer mailed March 31, 2005, and issue a revised

Examiner's Answer in accordance with the new rules effective September 13, 2004;

2) to properly consider IDSs filed August 22, 2001, July 22, 2004 and

May 3, 2005;

3) to mail a copy of the corrected 1449s to appellant, and

4) for such further action as may be appropriate.

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By:


DALE SHAW
Program and Resource Administrator
(571) 272-9797

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cc: BURR & BROWN
P.O. BOX 7068
SYRACUSE, NY 13261-7068

DS/vsh